

(2011) 05 AHC CK 0355
In the Allahabad High Court
Case No : Writ C. No. 14122 of 2010

Ram Lakhan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 10(5), 10(6)

Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 4

Citation : (2011) 05 AHC CK 0355

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri Raj Karan Yadav, learned Counsel for the Petitioner. Learned Standing Counsel appears for the Respondents.
2. The Petitioners have prayed for a writ in the nature of mandamus directing the Respondents not to take actual physical possession from the Petitioners in Case No. P-300/1976 (State v. Ram Avtar) in Village Katka, Pargana Jhunsi, Tehsil Phoolpur, District Allahabad under the Urban Land (Ceiling and Regulation) Act, 1976 and for a direction to abate the entire proceedings.
3. It is stated that Petitioner Nos. 1 to 4 are sons of Shri Masuriya Deen son of late Ram Avtar; the Petitioner Nos. 6 to 9 are sons of Shri Gyan Dutt son of late Ram Avtar and Petitioner Nos. 5, 10 and 11 are sons of late Ram Avtar. Late Shri Ram Avtar filed return u/s 6(1) of the Act. It is alleged that without serving any notice u/s 8(3), an order was passed u/s 8(4) on 21.11.1985 for determining excess land and for taking over possession. Neither notice u/s 10(5) was served nor actual physical possession was taken.
4. In paragraphs 6 and 10 of the counter affidavit, it is stated that notices u/s 10(1) and 10(3) were published in the Official Gazette on 28.1.1985 and

7.6.1997. The land has thus vested on the publication of notice u/s 10(3) on 7.6.1997 free from all encumbrances in the State. A declaratory notice was issued on 26.12.1997 which was served for handing over possession which was served on Shri Gyan Dutt, the son of the land owner on 5.2.1998. There is no report of the Tehsildar as alleged on 15.8.2009 with regard to the possession.

5. It is submitted by Shri Raj Karan Yadav, that u/s 3 of the Repeal Act the vesting of the vacant land is not sufficient. Under Sub-section (3) of Section 10 of the Act the possession of the land must be taken by the State or any person authorized by the State Government failing which the entire proceeding would abate under the Repeal Act, 1999. Section 3 and 4 of the Repeal Act, 1999 are quoted as below:

3. Saving.- (1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over the State Government or any person duly authorized by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken there under, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20.

(2) Where-

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings. All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are rentable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.

6. Learned Counsel for the Petitioner has relied upon judgments of the Supreme

Court and the High Courts in Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, Kailash and Anr. v. State of U.P. and Ors. 2005 (61) ALR 383; State of U.P. v. Devendra Nath and Anr. Civil Misc. Writ petition No. 76070 of 2005 decided on 15.12.2005; Babu Ram and Ors. v. State of U.P. and Ors. 2009 (75) ALR 873; Ram Chandra Pandey v. State of UP and Ors. 2010 (82) ALR 136 and M/s Star Paper Mills Ltd. v. State of U.P. and Ors. 2011 (1) CRC 93. In all these cases, it was held following leading judgment in Pt. Madan Swaroop Shrotiya Public Charitable Trust (supra), that unless actual physical possession was taken for which proceedings are provided under Sections 10(5) and 10(6) of the Act, and there is proof of taking over possession, the proceedings will abate u/s 3 of the Repeal Act, 1999.

7. Learned Standing Counsel on the other hand submits that once the land has vested in the State and that the proceeding for taking over possession were initiated, with a notice u/s 10(5) of the Act, there will be a presumption of official acts of taking over possession. She has relied upon judgments in Smt. Sulochana Chandrakant Galande v. Pune Municipal Transport and Ors. Civil Appeal No. 492 of 2007 decided on August 3, 2010 in which the Supreme Court held in paras 31, 32, 33, 34 as follows:

31. Undoubtedly, the Act, 1976, stood repealed by the Act 1999. However, it has no bearing on this case for the reason that proceeding pending in any Court relating to the Act, 1976, stood abated, provided the possession of the land had not been taken from the owner. Therefore, in a case, where the possession has been taken, the repeal of the Act would not confer any benefit on the owner of the land. (Vide Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, Ghasitey Lal Sahu v. Competent Authority (2004) 13 SCC 452), and Mukarram Ali Khan Vs. State of U.P. and Others,

32. From the above, the following factual situation emerges:

(I) The land was declared surplus under the Act, 1976, and acquired in 1979.

(II) Possession of the land was taken in 1979 by the State of Maharashtra and it was handed over to PMT for construction of the residential quarters for the staff.

(III) Appellant has not stated anywhere in the pleadings as to whether any amount/compensation as provided under the Act, 1976, had been received/accepted by her.

(IV) Appellant, for the reason best known to her, did not file appeal before the Land Tribunal, though Act, 1976 provides for two appeals.

(V) Appellant woke up from deep-slumber only after five years of the judgment of this Court in Atia Mohammadi Begum (supra) and filed revision u/s 34 of the Act, 1976, in 1998.

(VI) The State Government allowed the revision without taking into consideration the point of delay; rather it relied upon its own circulars.

(VII) The State Government did not consider the consequences and particularly the issue of dis-possession of the Appellant from the land in dispute in 1978 itself.

(VIII) The judgment in Atia Mohammadi Begum (supra) has been over-ruled by this Court in N. Audikesava Reddy (supra).

33. Therefore, the law, as exists today, is that the land in dispute could be subjected to the provisions of the Act, 1976, with effect from 17.5.1976, i.e. the date on which the suit land came within the limits of the Municipal Corporation. The Act stood repealed in 1999, but the proceedings pending in any court would stand abated provided the tenure-holder was in possession of the land on the date of the commencement of the Act 1999. The High Court has taken note of the fact that the Appellant's revision had been entertained only on the basis of the judgment of this Court in Atia Mohammadi Begum (supra), which stood over-ruled by the subsequent judgment in N. Audikesava Reddy (supra).

8. Learned Standing Counsel has also relied upon a judgment of this Court in Mangal Sen v. State of U.P. and Ors. 2011 (2) ALJ 752 in which it was held that once the possession has been taken and Dakhalnama (possession memo), was signed by a witness and authorised officer concerned, the proceeding of taking over possession had come to an end, after which the Repeal Act will not benefit the Petitioner.

9. In all the aforesaid cases, the Courts have held that after final orders are passed u/s 8(4) and a declaration is issued u/s 10(3) vesting the surplus land in the State, the Repeal Act will not apply, if the possession of the land is taken over in his behalf or by a competent authority. In order to prove taking over possession prior to 18.3.1999, it is incumbent upon the State to establish in the Court that the possession was taken in accordance with the law, namely, that the person, in whose hand the land is declared surplus, has handed over possession in response to the notice u/s 10(5) of the Act or where the possession was not handed over, a Dakhalnama (possession memo) has been prepared, signed by a witness and authorised officer concerned in proceedings u/s 10(6) of the Act.

10. The possession of the land is taken in proceedings under subsections (5) and (6) of Section 10 of the Act of which the entries are made in a register in Form No. U.L.C.-III, and possession in column-9 of Form No. U.L.C.-I. The competent authority is required in token of the verification of the entries, to put signatures in column-2 of Form No. U.L.C.-I and column-10 of Form U.L.C. III.

11. In Smt. Sulochana Chandrakant Galande(supra) the Supreme Court, after considering Pt. Madan Swaroop Shrotiya Public Charitable Trust (supra); Ghasitey Lal Sahu and Anr. v. Competent Authority (2004) 13 SCC 452 ; and Mukarram Ali Khan Vs. State of U.P. and Others, held in para-32 as quoted above, that in the facts of that case, the land was declared as surplus in 1976, and acquired in 1979, the Appellant had not stated anywhere in the pleadings as to whether any amount/compensation was received or accepted by her and whether any appeal was filed. The Supreme Court held that the land in dispute will be subjected to

the provisions of the Urban Ceiling Act w.e.f. 17.5.1976, i.e. the date on which the suit land had come within the limits of Municipal Corporation. The proceedings did not abate as the High Court had taken note of the fact, that the Appellant's revision had been entertained only on the basis of the judgment in Atia Mohammadi Begum, which had stood over-ruled by the subsequent judgment in N. Audikesava Reddy's case. The Supreme Court observed that in that case the possession of the land was taken and handed over to Pune Municipal Corporation, for establishing a bus depot in the year 1988. The bus depot was constructed on the part of the suit land. However, the Appellant preferred a revision u/s 34 of the Act on 06.4.1998 contending that the land ought not to have been acquired under the Act, 1976, on the ground that the suit land was not within the urban area. It was held that the suit land had fallen into urban area. There was no question of dispute regarding taking over possession inasmuch as the land was admittedly taken in possession by the State and handed over to Pune Municipal Corporation in the years 1978-1979.

12. In Mangal Sen (supra) a Division Bench of this Court recorded finding in para-25 regarding possession as follows:

25. From a perusal of the record it appears that after due Notification u/s 10(1) dated 6.4.1985 and declaration u/s 10(3) on 6.11.1985 a notice for possession u/s 10(5) of the Act was issued on 20.2.1986 and an authorization to the Tehsildar by the competent authority was also given in this regard on 17.7.1985 itself. So the procedure prescribed u/s 10 of the Principal Act has been fully complied with. The possession has been taken without any resistance by the Petitioner, obviously under the cover of Dakhalnama (possession memo) signed by a witness and authorized officer concerned on 30.1.1990.

13. In the absence of any pleadings or assertion by the State in the counter affidavit or any material to show that the possession of the land was given in response to the directions issued u/s 10(5) and that any proceedings u/s 10(6) were taken and any Dakhalnama (possession memo) was prepared and entries were made in Form No. U.L.C. III, we find that the Petitioners are still in possession of the land.

14. In the facts of the case, we are of the view that on the enforcement of Urban Land (Ceiling and Regulation) Repeal Act, 1999, the proceedings undertaken under Urban Land (Ceiling and Regulation) Act, 1976 in respect of declaration of surplus land in the hands of Petitioner's grand father of which a share has been inherited by the Petitioner, through his father, have abated under the Repeal Act, 1999.

15. The writ petition is allowed. A writ of mandamus is issued directing the Respondents not to take possession of the disputed land in respect of surplus land in Case No. P-300/1976 (State v. Ram Avtar). The revenue record will be corrected accordingly treating the proceedings under Urban Land (Ceiling and Regulation) Act, 1976 initiated against late Shri Ram Avtar son of Maikkhu, to

have abated under the Urban Land (Ceiling and Regulation) Repeal Act, 1999.